IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 4TH DECEMBER 2007 / 13TH AGRAHAYANA 1929

OP.No. 20486 of 1997(L)

PETITIONER:

T.V.SANKARAN NAIR,
S/O. KRISHNAN NAIR, AGED 53,
RESIDING AT GOKULAM, THIRUNNUR P.O.,
CALICUT 29.

BY ADV. SRI.P.F.THOMAS
SRI.NIXON M.JOSEPH
SRI.SUNIL THOMAS
SRI.JOJI SUNIL

RESPONDENTS:
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1. PRESIDENT, UNNIKKULAM SERVICE
CO-OPERATIVE BANK LTD.,
AROOR P.O., KOZHIKKODE.

2. LABOUR COURT, KOZHIKKODE , KERALA STATE.

BY ADV. SRI.U.K.RAMAKRISHNAN
SRI.P.V.LOHITHAKSHAN
SRI.V.KRISHNA MENON

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 04/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP. NO.20486/1997

ORDER ON CMP. NO.36716/1997 IN OP. 20486/1997

DISMISSED

04.12.2007 SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE COMMUNICATION FROM THE PRESIDENT DT. 26.8.87.

EXT.P2:- COPY OF THE ENVELOPE OF THE REGISTERED LETTER ADDRESSED TO THE PRESIDENT RETURNED UNSERVED.

EXT.P3:- COPY OF THE REGISTERED LETTER ADDRESSED TO THE ADMINISTRATOR RETURNED UNSERVED.

EXT.P4:- COPY OF THE APPEAL FILED BEFORE THE BOARD OF DIRECTORS DT. 25.6.89.

EXT.P5:- STATEMENT OF CLAIMS SUBMITTED IN I.D. 17/92 DT. 25.5.92.

EXT.P6:- WRITTEN STATEMENT SUBMITTED BY THE SOCIETY DT. 18.8.92.

EXT.P7:- COPY OF THE ORDER IN MP. 55/96 IN D 17/ 92 DT. 20.2.96.

EXT.P8:- COPY OF THE AWARD IN I D 17/1992. DT. 28.2.97.

/TRUE COPY/

P.A. TO JUDGE

tss

THOTTATHIL B.RADHAKRISHNAN, J.

O.P.No.20486 OF 1997

Dated this the 4th day of December, 2007

JUDGMENT

By G.O.(Rt)No.334/92/MVR dated 7.2.1992, the Government referred for adjudication, by labour court, the issue regarding the validity of the dismissal of the petitioner workman by the first respondent management. By the impugned Ext.P8 award, the labour court affirmed the enquiry proceedings and found no material to deviate from the conclusion of the disciplinary authority and also confirmed the punishment imposed. Before the labour court, the petitioner workman gave evidence as WW1 and the President of the employer was examined as LW1. Ext.M1 enquiry file and further materials as are relevant were marked up to M16 and Exts.W1 to W5 were also marked.

2. By preliminary order dated 24.11.1992, the labour court concluded that the enquiry conducted by the management into the charges is valid and proper and does not suffer from any

infirmity. That apart, the labour court noticed that the findings of the enquiry officer are not perverse and that the charges levelled against the workman stood proved. He was alleged to have accepted amounts by way of deposits from 11 members and deposit holders and entered them in personal ledgers and misappropriated those amounts. He also committed falsification of accounts by not showing the receipts of the said amounts in the cash book. He was held to have misappropriated an amount of Rs.2,000/- out of an amount of Rs.10,000/- entrusted to him after encashment of a cheque from M.C.C Bank, Balusserry. Certain amounts were shown less, in a joint voucher written in respect of suspense account of the Bank employees Sri.P.C.Krishnan and Sri.K.K.Krishnan, and an amount of Rs.8,000/- shown in the suspense account dated 16.9.1983 was misappropriated by the workman. The labour court, going by the impugned award, was satisfied with the enquiry proceedings and had perused the entire materials on record. It concluded that the management had conducted the disciplinary proceedings as enjoined by law and that four charges stood proved. The labour

court also concluded that there is no reason to disagree with the findings of the enquiry officer.

3. The thrust of the arguments before me, as also the fundamental issue on which there were disputes before the labour court, was as to whether the petitioner was inflicted a punishment by the management at an earlier point of time by demoting him from the category of senior clerk to junior clerk, as is apparently shown by Ext.W2 relied on by the petitioner and if that were so, whether the management acted with jurisdiction in inflicting the punishment of dismissal, ignoring the earlier punishment, which by itself, would have concluded the disciplinary proceedings. In support of this proposition, learned senior counsel appearing for the petitioner relied on a decision of this Court in **C.Kunhiraman** v. **Registrar of Co-operative Societies & Others** [1995 (1) KLJ 701], in which, it has been held categorically that once disciplinary proceedings have been concluded and the disciplinary authority had accepted the report of the enquiry officer, no fresh inquiry could be ordered and the

only remedy available to the management would be to proceed by way of appeal against the decision of the disciplinary authority. While there is no doubt to that proposition, what is raised for decision is as to whether Ext.W2 was in fact issued by Sri.T.V.Sankaran Nair, the then President of the employer society and if so, what is the legal effect of that document.

4. Ext.P7, in my view, is an unfortunate order, by which, the labour court refused to summon Sri.T.V.Sankaran Nair, when cited by the employee, on the assertion that Ext.W2 was issued by him. Different views are expressed in Ext.P7, but the conclusion arrived at was that the former president of the employer society could not be summoned at the request of the workman. I may, at once, recall that the materials on record would show that Sri.Sankaran Nair was the President of the committee of the Bank before it was placed under the control of the Administrator and the elected committee would have came into that office and it is that elected committee which imposed the penalty of dismissal from service, on the petitioner.

Therefore, if the petitioner had a case that Ext.W2 was issued by the President then in office, i.e., Sri.Sankaran Nair, even before the Administrator came to be appointed, there is no legitimate reason to exclude the evidence of Sankaran Nair. But with the passage of time, it is now stated that Sankaran Nair is no more. Therefore, the matter has to get concluded either on the basis of secondary evidence or on the basis of inference, which may have legitimately sustained.

5. In the above view of the matter, the findings of the labour court in Ext.P8 under points 3 and 4 are examined. The labour court answered the question of law and facts regarding the sustainability of Ext.W2 and the legal effect of any decision evidenced thereby. It can be seen that the labour court had concluded that Ext.W2 was an improbable document and still further, that even if that document was issued by Sankaran Nair to the petitioner, it did not contain anything worth legal sustenance. The labour court stated that the workman, when examined, failed to prove that there were posts of junior clerks

and senior clerks in the Bank and therefore, the very statement that he was demoted from the category of senior clerk to junior clerk was unaccepted. It was noticed that he has admitted that no order was given to him promoting him from the category of junior clerk to senior clerk, though it was his case that he was initially appointed as junior clerk and later promoted to the category of senior clerk.

6. Secondly, the labour court noticed that the alleged order of demotion is not recorded in Ext.M12 and M13 minutes books of the bank and, Ext.M11 series of minutes books of the sub-committee of the management bank for the period from 26.2.1987 to 13.7.1988 would show that the Board of Directors of the Bank never took any such decision.

7. Thirdly, the labour court relied on Rule 198 of the Kerala Co-operative Societies Rules, 1969 to hold that only the sub-committee or executive committee had authority to pass an order of punishment in the case of an employee drawing more than

Rs.300/- as salary. The argument on behalf of the workman that such amendment came in 1992, impairing the President to impose penalty did not find favour in view of the fact that Ext.W2 is dated 26.8.1987, much before the amendment at 1992. As such, the labour court concluded that it was only the sub-committee or executive committee which could have imposed punishment on the petitioner and not the President.

8. Learned senior counsel appearing for the petitioner is right in pointing out that a plain reading of Ext.W2 would show that the said document, by itself, does not contain any decision of demotion, but it is only a communication by the President regarding a decision already taken and that therefore, there would be no meaning in saying that the decision was taken by the President. The words in Ext.W2 show that the President was apparently communicating only a decision, which is already on record. But the labour court, having perused Exts.M11, M12 and M13, have concluded, on facts, that there was no such decision, taken by the Board of Directors, sub-committee or any

other competent authority in the Bank. That is a finding of fact which has been rendered after adverting to and considering the entire materials on record. Therefore, it does not come in the realm of this Court under Article 226 of the Constitution of India to sit in judgment on such finding as if this Court is sitting in appeal on the conclusions of the labour court in that regard. Being unassailable as perverse, I find no jurisdictional error or legal infirmity in the impugned Ext.P8 in that regard.

9. On to the question of proportionality of the punishment, having regard to the facts, the findings and the nature of the establishment of the employer, no interference is called for, having regard to the misconducts that are held to have been proved.

In the result, the writ petition fails. The same is accordingly dismissed. No costs.

Sd/-

THOTTATHIL B.RADHAKRISHNAN,
Judge

kkb.